

Article - Estates and Trusts

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§14.5–906.

(a) A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that the term:

(1) Relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries;

(2) Was inserted into the trust as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor; or

(3) Was unreasonable under the circumstances.

(b) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that the existence and contents of the exculpatory term were adequately communicated to the settlor.

(c) If the settlor was represented by independent counsel, an exculpatory term is not considered drafted or caused to be drafted by the trustee, even if the term incorporates suggested provisions provided by the trustee.

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